



751

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable Edgar A. Maddox
County Attorney
Palo Pinto County
Palo Pinto, Texas

Dear Sir:

Opinion No. 0-3970

- Re: (1) Is it lawful and proper for a justice of the peace sitting as a committing magistrate to accept complaint and issue a warrant of arrest for an offense that is within the jurisdiction of the county court of the county?
- (2) Should not the complaint issued by a justice of the peace in the above situation be filed upon his examining trial docket and then transmitted to the County Clerk after examining trial is had or waived?

This is to acknowledge your letter requesting our opinion upon the questions stated above.

In examining the authorities relative to the first question, we find the following statement by Judge Brooks of the Court of Criminal Appeals in the case of Lindley vs. State, 57 Tex. Cr. R. 346, 123 S. W. 141:

"We find but one bill of exception in the record, which complains that the affidavit in this case, upon which the information was filed,

was taken before the justice of the peace for precinct No. 1, and delivered to the county attorney, and the county attorney filed an information on it. This is clearly authorized by the laws of this state."

The Lindley case was followed in the case of Duncan vs. State, 102 Tex. Cr. R. 612, 279 S. W. 457. See also, Gentry vs. State, 62 Tex. Cr. R. 497, 137 S. W. 695.

From a reading of the above cited cases it is clear that it is lawful and proper for a justice of the peace to accept a complaint for an offense that is within the jurisdiction of the county court. See Article 415, Code of Criminal Procedure.

Upon acceptance of the complaint, it is the duty of the magistrate to issue a warrant for the arrest of the accused. See Article 220, Code of Criminal Procedure. Your first question is therefore answered in the affirmative.

The warrant of arrest is executed, as provided by Article 233, Code of Criminal Procedure, by the officer or other person to whom it is directed, taking the person charged forthwith "before the magistrate who issued the warrant, or before the magistrate named in the warrant." Article 245, Code of Criminal Procedure, reads as follows:

"When the accused has been brought before a magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel."

The accused may waive the examination alluded to in the above statute. If he does waive, the magistrate should require a proper bond and transmit the complaint to the county attorney, who should prepare and file an information based upon the complaint. Both the complaint and information should be filed in the county court. If, upon the examination the magistrate is satisfied from the evidence that it is probable that the accused is guilty of an offense of which the county court has jurisdiction, it is the duty of the justice of the peace to send the whole case to the county court, even though the complaint contains some counts of which the justice court would have jurisdiction. See the case of Ex parte Holcomb, 60 Tex. Cr. R. 204, 131 S. W. 604, where a writ of habeas corpus was sought on

the ground that the county court had no jurisdiction of the case, filed originally in the justice court, and which was transferred to the county court following an examining trial. The Court of Criminal Appeals held the relator entitled to no relief, saying the above procedure was proper.

The case of Wrenn vs. State, 82 Tex. Cr. R. 642, 200 S. W. 844, approves the procedure of the justice of the peace accepting a complaint and making the warrant of arrest returnable to the county court. In that case the sheriff made the affidavit on a Sunday, the complaint charging the defendant with gaming. The justice of the peace transmitted the complaint to the county court the next day, and on said date (Monday) the county attorney filed his information, based upon the complaint sworn to before the justice of the peace; appeal was perfected from the judgment of the county court, but the appellate court held there was no error, approving the procedure followed in the lower courts.

In answer to your second question it is our opinion that the justice of the peace, when sitting as a magistrate to hold an examining trial, should file the complaint, issue the warrant and other process, and note the same upon his examining trial docket. Upon waiver by the accused, or determination by the justice of the peace that accused should be held to answer to the county court, all papers in the case should be forthwith forwarded to the county clerk for proper action in the premises. The county attorney should then prepare his information; if the justice court complaint is otherwise in proper form, the case is then ready for trial in the county court. A new complaint is unnecessary and the defendant is bound to appear upon his bond made in response to the order of the justice court binding him to the county court.

Trusting the above fully answers your inquiries, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

RECEIVED OCT 4 1941
Edgar A. Maddox

DEPUTY ATTORNEY GENERAL

Benjamin Woodall
By
Benjamin Woodall
Assistant

BW:RS

